IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2007

CORAM :

THE HON'BLE MR. JUSTICE S.TAMILVANAN

A.S.No.203 of 1996

1.V.S.Boys Higher Secondary School,
Thiruvarur rep. By
its Manager,
V.T.Somasundaram.

2.Thiru Sundaram,
Secretary and Correspondent,
V.S.Boys Higher Secondary School,
Thiruvarur.

3.K.Subburathinam,
Head Master,
V.S.Boys Higher Secondary School,
Thiruvarur. .... Appellants

vs.

1.Durairaj
2.Tmt. Lakshmi .... Respondents

Appeal filed against the Judgment and Decree dated 19.12.1994 passed in O.S.No.34 of 1989 on the file of the Subordinate Judge of Nagapattinam.

For Appellants : Mr.S.K.Rakhunathan

For Respondents : Ms.AL.Gandhimathi

JUDGMENT

Aggrieved by the judgment and decree dated 19.12.1994 made in O.S.No.34 of 1989 on the file of the learned Subordinate Judge, Nagapattinam, the defendants in the suit have preferred this appeal.

2.The brief facts of the case are as follows:-

It is not in dispute that the deceased Loganathan who is the son of the respondents herein aged about 13 years was a student in the appellants' school, studying VIII standard. On the fateful day, i.e., on 11.03.1987, the deceased Loganathan had gone to the school, his class teacher having been on leave and out of eight

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

periods per day, for the last two periods no substitute teacher was posted to handle the class. Though, it had been informed that the seventh period would be handled by Tamil Teacher, according to the respondents/plaintiffs, even the said Teacher did not attend the class. The third appellant who is the Head Master of the school, had not posted any substitute Teacher to handle the class. However, the boys were permitted to play Kabadi, as there was no Physical Education Teacher, while the deceased Loganathan was participating in the Kabadi, he was handled roughly by the other playmates, which resulted in the death of the deceased loganathan, the son of the respondents herein.

3.According to the respondents, the unfortunate occurrence had happened only due to the carelessness and negligence on the part of the appellants, for which, the respondents have claimed compensation of Rs.50,000/- against the appellants/defendants for the loss of their son.

4.It was contended by the learned counsel for the appellants that as there was no negligence on the part of the third appellant or the other appellants. According to them, the appellants about 10 students including the deceased Loganathan alone had gone out of the class room without getting permission from the Head Master or from any other teacher and therefore, the appellants have not committed any negligence and as such, they are not bound to pay any compensation to the respondents herein.

5.It is seen from the impugned judgment and the case records that the first respondent who is the father of the deceased Loganathan was examined as P.W.1 apart from other witness P.W.2 and Exs.P.1 and P.2 were also marked on their side. On the side of the appellants, the third appellant was examined as R.W.1 and no document was marked on the side of the appellants/defendants.

6.The trial Court after considering the evidence both oral and documentary adduced by both sides and also the arguments advanced by both sides, has held that the death of the deceased Loganathan was caused due to the negligence on the part of the school authorities and accordingly passed the award amount of Rs.25,000/- in favour of the respondents/plaintiffs to be paid by the appellants/defendants with interest and costs. Aggrieved by the judgment and decree, this appeal has been preferred by the defendants.

7.Mr.S.K.Rakhunathan, the learned counsel for the appellants contended that based on the alleged negligence, the respondents have claimed compensation against the appellants/defendants, hence in order to fix the same there should have been existence of negligence on the part of the appellants herein. According to the learned counsel, there is no evidence available on record to show

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

that there was any negligence on the part of the Head Master, third appellant herein. As there were 3000 students studying in the school, it may not be possible for the third appellant to take individual care of the students. He further contended that the student Loganathan could have died due to some heart ailment.

8.The learned counsel for the appellants further submitted that there was no post mortem made to find out the cause of the death of the deceased student and according to him, the principle of 'loco parentis' is not applicable in India.

9.Per contra, Ms.AL.Gandhimathi, learned counsel appearing for the respondents contended that admittedly the occurrence had taken place during the class hours within the school campus. It is not in dispute that the class teacher was on leave on the date of occurrence and no Teacher was handling the class continuously for two afternoon periods and no substitute Teacher was also posted, and the students were allowed to play themselves within the school campus and while playing Kabadi, as the playmates handled the deceased Loganathan roughly without the guidance of any Physical Education Teacher, the occurrence had taken place and therefore, the third appellant namely, the Head Master and the other appellants being the school authorities are liable to pay compensation to the parents of the deceased student. According to the learned counsel for the respondents, the available evidence on record would show that there was negligence on the part of the appellants. It is not in dispute that the deceased Loganathan was in the school Scout Unit which would show that he was heal and healthy before the occurrence. The defence that the student could have died due to any heart ailment cannot be accepted.

10.It is not in dispute that the deceased Loganathan had been taken to the hospital, where, the student died. Hence, according to the learned counsel for the respondents, even the school authorities could have obtained certificate with regard to the health condition of the deceased since they had taken the student to the hospital.

11.In this appeal, the question to be decided is,

Whether there was any negligence on the part of the appellants/defendants, so as to direct them to pay compensation to the respondents and whether the compensation awarded by the Court below is exorbitant.

12.It has been clearly admitted that the deceased Loganathan aged about 13 years was studying VIII Standard, in the Boys Higher Secondary School run by the appellants and on 11.03.1997, for the last two periods in the evening, there was no Teacher to handle the said class. The class Teacher of the said class was also on leave.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Admittedly, some students went out of the class room and played Kabadi within the school campus. In such circumstances, it cannot be said that the students went out of the class room and played Kabadi without the knowledge and beyond the control of the Head Master.

13.It is clear that the accident had taken place while the students playing Kabadi and due to rough handling of the play mates of the deceased. The same could have been prevented, if there was any Physical Education Teacher available there to regulate while the students playing Kabadi. As the unfortunate occurrence had taken place within the school campus, during class hours, while the students were playing Kabadi and that there was no teacher to regulate the students. Hence, it cannot be said that there was no negligence on the part of the Head Master, the third appellant herein. Being the Head of the School, the third appellant should have taken steps to prevent the unfortunate occurrence.

14.As per the principle of 'loco parentis' when a student at the adolescent age or childhood is sent to school by the parents, it is also the duty of the school authorities to play the role of the parents in safeguarding the students. The term 'loco parentis' in the Advanced Law Lexicon, P.Ramanatha Aiyer 3rd Edition, is defined as under:

> "What is the meaning of a person in loco parentis? I cannot do better than refer to the definition of it given by Lord Eldon in *ex parte Pye* (18 Ves. 140). Lord Eldon says it is a person, in the situation of the person described as the lawful father of the child.' Upon that Lord Cottenham in *Powys v. Mansfield,* 7 L.J. Ch.9 observes:-'But this definition must, I conceive, be considered as applicable to those parental offices and duties to which the subject in question has reference *viz.*, to the office and duty of the parent to make provision for the child. The offices and duties of a parent are infinitely various, some having no connection whatever with making a provision for a child; and it would be most illogical, from the mere exercise of any of such offices or duties by one not the father, to infer an intention of such person to assume also the duty of providing for the child.' so that a person in *loco parentis* means, person taking upon himself the duty of a father of a child to make a provision for that child" (*per* Jessel, *M.R.Bennet v. Bennet,* 10 Ch D 477).

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

> By the expression a person in loco parentis' is meant a person who puts himself in the situation of a lawful father of the child, with reference to the father's office and duty of making provision for the child. *Karnal Distillery Co. Ltd. v. Ladi Parshad Jaiswal,* AIR 1958 Punj 190, 202. [Indian Contract Act (9 of 1872),S.16]."

15.In the instant case, it is quite clear that the students at the adolescent age were allowed for playing Kabadi, during class hours within the school campus without the guidance of any Physical Education Teacher due to which the son of the respondents died on account of rough handling of his playmates. Hence, I am of the view that the principle of 'loco parentis' is also applicable apart from the negligence on the part of the school authorities on the facts and circumstances of this case. The learned counsel for the appellants relied on the decision reported in K.Samikkannu v. The Union of India rep. By the Secretary, Department of Energy, New Delhi (1997 (1) CTC 275) wherein in an accident, a 13 years old boy doing his VIII Standard, had gone to a prohibited area of mining operation site, in Neyveli Lignite Corporation at Neyveli, getting trapped into the land slide and died. This Court has held in the said case, that contributory negligence does not arise for an action of minor children and that the authorities could have prevented the same by posting adequate securities near by the prohibited area.

16.In the instant case, there could be no contributory negligence attributed against the deceased Loganathan since he had not committed any prohibited act. As there was no Teacher to handle the class continuously, for about two periods, it could be legally inferred that the students were allowed to play Kabadi within the school campus, but without the guidance of any Teacher which was resulted in rough handling of the deceased student by his play mates, which resulted in his death. Therefore, I am of the view that the negligence on the part of the third appellant and vicarious liability on the part of the other appellants have been clearly proved in this case and the defence raised by the appellants cannot be accepted.

WEB COPY

17.The next aspect is with regard to the quantum of compensation awarded by the Court below. It is seen that only a sum of Rs.25,000/- was awarded as compensation to be paid with interest and cost to the respondents being the parents of the deceased. The said amount of compensation is no way considered to be exorbitant. On the facts and circumstances, I find no reason to interfere with the award of compensation passed by the court below. In the result,

https://hcservices.ecourts.gov.in/hcservices/

the appeal fails and accordingly the same is dismissed. However, there is no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

jbm

To

1.The Subordinate Judge, Nagapattinam.

2.The Section Officer, V.R.Section, High Court, Madras.

one cc to M.S.K.Rakhunathan, advocate SR.No.69232

one cc to M/s.AL.Kanthimathi, advocate SR.No.69541

A.S.No.203 of 1996

sky/7/1

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/